

APPEAL NO. 040885  
FILED JUNE 8, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 25, 2004. The hearing officer determined that the date of the claimed injury is \_\_\_\_\_; that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that if the claimant had sustained a work-related injury on \_\_\_\_\_, the respondent (carrier) would be relieved of liability due to the claimant's failure to timely report the alleged injury; that the carrier timely disputed the claimed injury, and therefore did not waive the right to contest compensability; that because the claimant did not sustain a compensable injury, he did not have disability; and that if the claimant had sustained a compensable injury, the carrier would not be relieved of liability, because the claimant timely filed a claim for compensation within one year. The claimant appealed the hearing officer's determinations regarding injury, timely notice, carrier waiver, and disability on sufficiency of the evidence grounds. The carrier responded, urging affirmance. The hearing officer's determinations regarding date of injury and the timeliness of the claim filing have not been appealed and have become final. Section 410.169.

DECISION

Affirmed.

The appealed determinations in this matter all involved questions of fact for the hearing officer to resolve. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). Whenever there is conflicting evidence, credibility is a factor both as to testimony and documentary evidence. An appellate body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. Our review of the record reveals that the hearing officer's determinations are supported by sufficient evidence and are not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **FIDELITY AND GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Daniel R. Barry  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge